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SCHMELZ'S ADM'R *v.* McMENAMIN et al.

June 8, 1916.

[89 S. E. 126.]

1. Executors and Administrators (§ 221 (4)*)—Claims—Evidence.

—In a suit by the administrator of a deceased executor, where distributees of testator's estate claimed from the estate of the said executor a debt due from the executor to the estate of testator, evidence held sufficient to show such indebtedness.

[Ed. Note.—For other cases, see Executors and Administrators, Cent. Dig. §§ 903, 903½, 1872-1874, 1876; Dec. Dig. § 221 (4).* 5 Va.-W. Va. Enc. Dig. 538.]

2. Executors and Administrators (§ 88*)—Collection of Assets—Debts Due from Executor.—Where one who owes a decedent becomes his executor, it is his duty to charge himself with the debt.

[Ed. Note.—For other cases, see Executors and Administrators, Cent. Dig. §§ 393, 393½; Dec. Dig. § 88.* 5 Va.-W. Va. Enc. Dig. 538.]

Appeal from Circuit Court, Elizabeth City County.

Suit by surviving administrator of the estate of George A. Schmeltz, in which James McMenemy and others petitioned for allowance of claim. From a decree for petitioners, complainant appeals. Affirmed.

J. Winston Read, of Newport News, for appellant.

Allan D. Jones, of Newport News, for appellees.

HOSTETTER et al. *v.* HITCHINGS.

June 8, 1916.

[89 S. E. 135.]

1. Easements (§ 61 (9)*)—Right of Way—Evidence.—Evidence on a bill to enjoin the obstruction of an alleged private right of way in a so-called street held to show that complainant was entitled to the use of such street as a private right of way.

[Ed. Note.—For other cases, see Easements, Cent. Dig. § 143; Dec. Dig. § 61 (9).* 4 Va.-W. Va. Enc. Dig. 855.]

2. Easements (§ 12 (2)*)—Grant—Construction.—A deed of a lot out of a tract which had been subdivided into lots and streets, situated on a corner, and running back on a street intersecting the front street which the deed provided was "not to be used by the public" presented a case for the application of the rule, "expressio unius est exclusio alterius."

[Ed. Note.—For other cases, see Easements, Cent. Dig. §§ 35-38; Dec. Dig. § 12 (2).* 4 Va.-W. Va. Enc. Dig. 865.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

3. Easements (§ 12 (1)*)—Construction against Grantor.—Such grant must be construed most strictly against the grantor.

[Ed. Note.—For other cases, see Easements, Cent. Dig. §§ 35-38; Dec. Dig. § 12 (1).* 4 Va.-W. Va. Enc. Dig. 865.]

Appeal from Law and Chancery Court of City of Norfolk.

Bill for injunction by Lelia C. Hithcings against Jacob Hostetter and others. Demurrer to bill overruled, and injunction granted, and defendants appeal. Pending hearing on the appeal, appellee died, and her heirs at law were substituted. Decree affirmed.

Old, Brockenbrough & Webster, of Norfolk, and *J. W. Denlinger*, for appellants.

Percy S. Stephenson, *Jas. G. Martin*, and *G. Tayloe Gwathmey*, all of Norfolk, for appellees.

ROLLER *v.* COOLEY et al.

June 8, 1916.

[89 S. E. 136.]

Taxation (§ 809 (2)*)—Tax Deed—Effect on Title.—A complaint, in suit to remove as a cloud a tax deed by the state given after delinquent tax sale under the act approved February 23, 1906 (Laws 1906, c. 52), from which it appears that the deed was duly recorded and that the taxes for which the land was sold to the state were chargeable on the land and had not been paid before the sale, is demurrable, although it also appears therefrom that after such deed by the state to defendant in 1910 the right to redeem was attempted to be exercised by plaintiff, and after the first sale of the land to the state for delinquent taxes in 1896 it was again sold or attempted to be sold to the state for delinquent taxes in 1903, and although defendant's deed does not contain the recitals required in a deed upon an original tax sale, since section 12 of the act provides that after due record of such deed the title "shall stand vested in the grantee in such deed, as it was vested in the party assessed with the taxes and levies thereon at the commencement of the year for which * * * it was sold, or any person claiming under such party, subject to be defeated only by proof that the taxes or levies for which said real estate was sold to the commonwealth, were not properly chargeable thereon, or that the taxes and levies properly chargeable on such real estate have been paid."

[Ed. Note.—For other cases, see Taxation, Cent. Dig. § 1601; Dec. Dig. § 809 (2).* 13 Va.-W. Va. Enc. Dig. 172.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.